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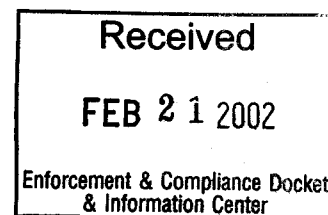
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VIA FEDERAL EXPRESS

United States Environmental Protection Agency
Enforcement and Compliance Docket
and Information Center, (Mail Code 2201A)
Attn: Docket Number EC-2000-007
1200 Pennsylvania Avenue, NW
Washington, DC 20460



SUBJECT: Comments on EPA's proposed Establishment of Electronic Reporting; Electronic Records Rule, 66 FR 46162

Ashland Inc. hereby respectfully provides comments on the U.S. Environmental Protection Agency's (EPA) August 31, 2001 proposed Establishment of Electronic Reporting; Electronic Recordkeeping Rule. This proposed rule is also known as the Cross-Media Electronic Reporting and Recordkeeping Rule (CROMERRR). The proposed rule, published in the Federal Register at 66 FR 46162-46195, sets forth conditions under which EPA would allow submission of electronic documents and maintenance of electronic records to satisfy federal reporting and recordkeeping requirements in EPA's regulations. The proposal describes computer system hardware and software requirements for electronic submittal of environmental compliance reports and for electronic record collection, storage, management, transfer, retrieval, and archiving. The rule would apply to those who voluntarily wish to utilize electronic systems to submit environmental compliance reports and store and manage environmental data.

Ashland Inc. is a Fortune 250 company with a diverse mix of businesses. Ashland is comprised of four wholly owned divisions, and also owns a 38 percent equity share of Marathon Ashland Petroleum LLC, an oil refining and marketing joint venture with Marathon Oil Company. Ashland's four wholly owned divisions are: Ashland Specialty Chemical Company, Ashland Distribution Company, Ashland Paving and Construction (APAC), and Valvoline. Ashland Specialty Chemical Company manufactures a wide variety of products within its six divisions, including adhesives, polyester resins, water treatment chemicals, foundry mold binders and chemicals, high purity chemical systems for the semiconductor manufacturing industry, and maleic anhydride. Ashland Distribution Company is the largest chemical distributor in North America, and a leading plastics distributor in Europe. APAC is the largest paving and road construction company in the United States, with operations primarily in the southeastern states.

Valvoline is a leading manufacturer and distributor of high quality motor oils and automotive care products. With this array of businesses, Ashland's more than 100 U.S. manufacturing and distribution facilities have extensive environmental reporting and recordkeeping requirements. Therefore, this proposed rule would have a major impact on Ashland's operations.

Ashland supports the agency's initiative to provide and encourage the use of electronic systems for data recordkeeping and reporting in support of the Agency's reinvention goals and the Government Paperwork Elimination Act (GPEA). However, while Ashland supports the principles behind the proposal, CROMERRR raises a number of extremely serious concerns.

Ashland's major issues with regard to the proposed rule are:

- The extremely broad scope of the rule makes it mandatory in a practical sense, even though it is described as voluntary.
- The proposed criteria for electronic reporting are complex, specific, and expensive, and most existing electronic reporting systems do not meet them
- The stringent technical requirements for recordkeeping systems will require major upgrading or replacement of existing systems.
- EPA substantially underestimated the costs of implementation on the regulated community and authorized state and local agencies.
- EPA failed to perform a risk assessment and cost/benefit analysis prior to moving forward with the draft rule.
- EPA should withdraw the proposed rule and develop a new proposal that is flexible enough to incorporate current technology and accommodate future advances.

Each of these points will be discussed below.

Broad scope of proposal makes it mandatory

Foremost among Ashland's concerns is the apparent mandatory nature of the rule. CROMERRR is presented as voluntary, but the proposal would in fact be mandatory for all EPA records that are managed by computer systems. As written, CROMERRR would apply to all records managed by an electronic system with the exception of

hazardous waste manifests, which are addressed under a separate proposed rule. If a regulated entity wishes to avoid CROMERRR requirements, it appears that no computers could be used at any point to create, modify, store, or distribute the data.

The proposal defines an electronic record as "any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved or distributed by a computer system." This extremely broad definition would apply to any EPA record that has ever passed through a computer. In fact, it captures virtually any business document. Information that meets this definition could satisfy CROMERRR's recordkeeping requirements only if it "is generated and maintained by an acceptable electronic record-retention system as specified" in the proposed rule. Therefore, simply storing environmental data on a computer would subject the regulated entity to the CROMERRR requirements. As such, the rule becomes mandatory for anyone using a computer system to generate, store, or manage environmental compliance data.

Furthermore, even maintaining a printed copy of computerized information would apparently not be sufficient to avoid CROMERRR requirements. Any information related to regulatory compliance, including information generated using common word processing software, would come under the rule. The incredibly broad scope of this proposal would immediately abolish the use of almost all current data management and document software for environmental compliance activities, forcing the regulated community to revert to hand and typewritten documents.

Just as disconcerting is the impact CROMERRR may have on electronic data collection systems. Virtually all continuous emission monitors, analyzers, process controllers and alarm systems utilize electronic systems to monitor, measure and record data that is ultimately used to verify compliance or non-compliance with permit parameters and other regulatorily required reporting. All of these systems would become subject to the stringent requirements of CROMERRR. Ashland believes that virtually no systems currently in use to monitor and record process and emission data meet the very stringent requirements mandated by this rule, which again would require the discontinuance of these systems until they were either modified or replaced with systems meeting CROMERRR requirements.

EPA seemingly has failed to understand the extent to which environmental records are currently maintained by computers. Ashland uses numerous computer databases to manage environmental data throughout its many divisions. These databases are essential elements for Ashland to demonstrate compliance with hundreds of air permits, wastewater permits, and hazardous waste management requirements at our many facilities throughout the United States. Most of these databases are built on commercial

software platforms, such as Microsoft Excel®, Microsoft Access®, and FoxPro®, none of which currently meet the recordkeeping criteria specified in CROMERRR. To deem all of these systems impermissible will result in an unprecedented loss of environmental data and make efficient future data management virtually impossible without large capital outlays on the part of both the regulated community and environmental regulatory agencies. Ashland believes this would, in fact, be counter to the goals of EPA's regulatory reinvention initiative and the GPEA.

The criteria for electronic reporting are complex, specific, and expensive

This proposed rule is very prescriptive in its requirements regarding the reporting of environmental performance and permit data. For example, the rule contains complex submitter registration and electronic signature requirements to enable data submittal through the Central Data Exchange (CDX) portal. Moreover, U.S. EPA appears poised to demand that states adopt the CROMERRR requirements. Many state environmental agencies already have in place electronic data reporting systems, which allow regulated entities to quickly and accurately transmit required data in a cost effective manner. For example, the Ohio Environmental Protection Agency accepts routine monitoring data through its databases known as STARS and SWIMS. In Texas, the Texas Natural Resource Conservation Commission requires electronic submission of the annual hazardous waste report utilizing their STEERS program. None of these data management systems meet the standards for electronic reporting mandated under CROMERRR, and would have to be abandoned and replaced at great cost.

This issue is not lost on state environmental agencies, who have already invested many millions of taxpayer dollars in electronic systems to provide for collecting and reporting environmental data. Ashland strongly urges EPA to withdraw the CROMERRR proposal as written, in favor of a new proposal incorporating significant flexibility to allow the continued use of existing systems.

Technical requirements will necessitate expensive upgrades or new systems

The technical requirements of the electronic reporting and recordkeeping rule are not insubstantial. CROMERRR imposes extensive anti-fraud provisions that many computer systems, including both new and existing systems, simply do not have. For instance, CROMERRR would require electronic records be maintained in a form that may not be altered without detection. The proposal would also require that records be electronically maintained without alteration for the entirety of the record retention period. This requirement is particularly burdensome when considering the costs of transitioning or maintaining data in the face of common and frequent upgrades in both hardware and software. A third CROMERRR requirement would mandate the use of secure,

computer-generated, time-stamped audit trails to automatically record all creation, modification or deletion of records, a capability lacking in Microsoft Excel®, for example. Several additional requirements contained in the proposal present similar problems.

CROMERRR mandates compliance for the entire record retention period required by regulation. These record retention requirements vary, but are minimally three years and can be much longer. The proposed regulation fails to consider the advancement of technology, which continuously brings new hardware and software into use. For example, the standard media for storing data on PC based systems has evolved from eight-inch floppy disks and tape drives to 5¼-inch floppy disks, then 3½-inch diskettes, and now to read/write CD formats and ZIP drives. Under the CROMERRR proposal, regulated entities would be required to maintain at least some of the obsolete systems to maintain access to older "legacy" records, or a company's older data files will have to be transferred to newer media under very strict and expensive controls.

Ashland is also concerned about the impact that CROMERRR will have on third party providers of environmental services, such as contract laboratories and consulting firms. These firms also utilize computer systems to collect, store, and manage data, as well as transmit data and reports to their clients. As this data is fundamental to environmental compliance, the computer systems of these third party providers are also subject to CROMERRR standards, which will necessitate large capital outlays for these businesses as well.

CROMERRR seems to declare impermissible today's use of computers to keep records to meet EPA recordkeeping requirements. In fact, it would seem to allow computer usage for recordkeeping only after EPA announces that such usage may begin, completely ignoring the fact that computer systems have been used to manage environmental data for decades. Accordingly, it seems to imply that the use of computers to keep EPA-mandated records today is inadequate, although the agency provides no rationale to support this contention.

As stated earlier, Ashland currently uses many commercially available software platforms to generate and manage environmental records. If CROMERRR is finalized as written, Ashland would be forced to abandon all of our current computer systems, creating an immediate non-compliance situation with respect to reporting and recordkeeping requirements as specified in our state issued permits. For this reason, Ashland strongly urges EPA to withdraw the electronic reporting and recordkeeping proposed rule, in particular the recordkeeping portion of the rule.

EPA substantially underestimated costs

EPA presented the rule as voluntary but it is, in every practical sense, mandatory. CROMERRR will require costly upgrades to, or even replacement of, computer systems used by reporting facilities. To fully understand the potential impact of CROMERRR, consider that approximately 1.2 million facilities report to and are regulated by EPA. If CROMERRR were implemented as proposed, each facility would, using EPA's cost estimates, incur \$40,000 in one-time compliance costs, plus an additional annual cost of \$17,000. Thus, even under EPA's own conservative cost estimates, the rule would have a total initial impact of approximately \$48 billion, with continuing annual costs of over \$20 billion.

However, most analysts believe the cost per facility will be much closer to \$1 million, as opposed to EPA's estimate of \$40,000. These staggering costs are completely unnecessary, and represent a tremendous financial burden for industry, with absolutely no net improvement in human health or environmental protection.

Furthermore, authorized state environmental agencies will also be required to spend extremely large sums to upgrade their computer systems. These expenditures would have to be borne by public funding or increased fees assessed against the regulated community. Again, these costs would not result in any improvement in human health or environmental protection.

EPA failed to perform a risk assessment and cost/benefit analysis

The federal Office of Management and Budget (OMB) guidance to federal agencies implementing the Government Paperwork Elimination Act, which CROMERRR does, directs them to conduct assessments of the risks, benefits, and costs of security measures. Ashland understands that the OMB advised that EPA had not performed a risk assessment with regard to CROMERRR, and greatly underestimated the costs associated with compliance. CROMERRR seems to embody a "one size fits all" approach, requiring the highest level of security for even the most routine records. A risk assessment and cost-benefit analysis might have found that the risk of fraud for many or most EPA-mandated records does not justify the costs of implementing CROMERRR. EPA has apparently failed to conduct a risk assessment on the need for CROMERRR's anti-fraud provisions, despite OMB direction to do so.

EPA has failed to justify the need for the rigorous security and data integrity standards prescribed in CROMERRR, nor has it identified data security deficiencies in existing systems. Therefore, Ashland believes that the rule should be withdrawn in its entirety, until the required risk assessment and cost/benefit analysis can be performed.

EPA should withdraw the proposal and develop a flexible rule

Ashland has very serious concerns with the broad scope and excessively prescriptive requirements set forth in the electronic reporting and recordkeeping proposal. Ashland is concerned that CROMERRR will place the same burdens on the regulated community as were felt by pharmaceutical firms that were required to comply with a similar rule issued by the Food and Drug Administration (FDA) in 1997. This rule, codified at 21 CFR Part 11, was also presented as a "voluntary" rule, but in reality has proven to be mandatory in a practical sense. Drug companies are spending millions of dollars retrofitting current systems or buying new ones to comply with the FDA rule. The CROMERRR proposed rule incorporates most of the hardware and software requirements of 21 CFR Part 11. EPA must avoid finalizing a similar regulation.

Ashland strongly encourages EPA to withdraw the entire CROMERRR proposal, both the reporting and recordkeeping portions. Ashland joins with the American Chemistry Council, the National Association of Manufacturers, the U.S. Chamber of Commerce, and other organizations to encourage EPA to withdraw CROMERRR and rethink the approach to implementing an electronic reporting and recordkeeping rule. Any new proposal should include significant flexibility to make it truly voluntary and to allow the continued use of existing systems, while providing for the development of new technology.

Ashland thanks EPA for this opportunity to comment on the CROMERRR proposed regulation and for the Agency's anticipated careful consideration of our concerns with this rule. If you have questions or need clarification regarding any information provided, please do not hesitate to contact Edward Graves in writing at the letterhead address, by telephone at (614) 790-4414, or via electronic mail at egraves@ashland.com.

Very truly yours,

ASHLAND INC.



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